

# *Daniel R. Bina*

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October 27, 2004

RE: Bankruptcy Case 04-50768  
Debtors: John and Carol McIntosh  
Your File 04-100.100

Enclosed, please find Debtor's response to your motion for turnover. We are intending on being present at the hearing and believe this response is sufficient. Further, this letter is to confirm our conversation, that there will be no objections of this response based on the issue of timeliness based on our attempts to communicate and settle this case prior to today's date.

Very Truly Yours

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Daniel R. Bina,  
Bina Law Firm  
1639 Main Street North,  
Suite 1  
Pine City, MN 55063

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

John D. McIntosh and  
Carol Y. McIntosh,

Bky. No. 04-50768 GFK

Debtors.

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DEBTORS' MEMORANDUM OF LAW AND RESPONSE TO NOTICE OF MOTION  
AND MOTION FOR TURNOVER

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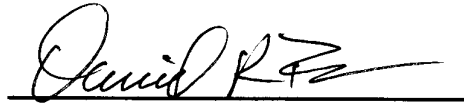
TO: THE COURT , THE TRUSTEE, AND THE U.S. TRUSTEE

DEBTOR THROUGH HIS ATTORNEY HEREBY RESPONDS TO THE TRUSTEES

1. Trustee has disputed the Alumacraft boat and stated that a possessory lien does not exist on such a boat. The validity of a claimed possessory lien has never been determined by the Court
2. Debtors' attorney was having discussions with Trustee regarding the legality of that lien before this motion for turnover.
3. Debtors believe that said lien is possessory due to the fact that that the possession of the property was the basis of the loan advancement by Tierney and further the possession of the boat was obtained voluntarily and not under self-help or under collection or enforcement of debt collection. See **In re White**, 203 B.R. 6134 (Bankr. N.D. Tex. 1996).

4. At nearly the same time as Trustee filed this motion for turnover, Debtor amended schedule C claiming any equity that may exist in that Alumacraft boat as exempt.
5. Subsequent to such exemption, Trustee filed a motion Objecting to Property Claimed as Exempt and scheduling a motion hearing for December 8, 2004.
6. Debtors through their attorney believes that it is inefficient and inequitable to schedule a motion for turn over while at the same time not having a valid determination of whether trustee is entitled to the property at all.
7. Wherefore Debtors request that the Court deny Trustee's motion, based on the fact that a valid possessory lien exists and if such lien did not exist, it is **presumed that Debtor is entitled to the equity in the Alumacraft boat** under 11 U.S.C. Section 522 (d) (5) until court order stating otherwise.
8. In the alternative, Debtors request that the Court continue such motion to the December 8, 2004 hearing so that all matters are heard together.

RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read "Daniel R. Bina", is written over a solid horizontal line.

DANIEL R. BINA  
ATTORNEY FOR DEBTORS  
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United States Bankruptcy Court  
District of Minnesota

IN RE:

Case No. \_\_\_\_\_

JOHN D MCINTOSH & CAROL Y MCINTOSH

Chapter 7

Debtor(s)

**CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true copy of the following document(s):

**DEBTORS' MEMORANUM OF LAW AND RESPONSE TO NOTICE OF MOTION AND MOTION FOR TURNOVER**

was(were) mailed to all persons in interest at the addresses set forth in the exhibit which is attached hereto, by first class mail, postage prepaid, on this 27th day of October, 2004.

/s/ Daniel R. Bina

Daniel R. Bina #200621

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